

IN THE IOWA DISTRICT COURT FOR POWESHIEK COUNTY

STATE OF IOWA	Plaintiff,	NO. FECR010822
v.		
CRISTHIAN BAHENA RIVERA,	Defendant.	STATE'S RESPONSE TO DEFENDANT'S MOTION FOR CHANGE OF VENUE

COMES NOW the State of Iowa, by and through Bart Klaver, Poweshiek County Attorney, and Scott D. Brown, Assistant Attorney General, and for its response to Defendant's Motion for Change of Venue states:

1. The Defendant Cristhian Bahena Rivera is charged with Murder in the First Degree. The Defendant is currently set for trial on September 3, 2019.

2. The Defendant filed an unverified Motion for Change of Venue citing that publicity surrounding his case has been so pervasive as to make a trial in Poweshiek County unfair. He is requesting a change of venue based on publicity relating to the investigation and pending case.

3. Iowa Rule of Criminal Procedure 2.11(10)(b) governs Motions for Change of Venue. In order for the Court to change venue there must be evidence that there is such a degree of prejudice that there is a substantial likelihood a fair and impartial jury cannot be preserved with a jury selected from Poweshiek County. In this instance, the Defendant is claiming that the offensive condition is the publicity of the case to this point which has created the prejudice required by the rule. The publicity would include reports in local newspapers, electronic media and social media concerning the Defendant, charges, and pending trial. The Defendant claims in his motion to be a "Mexican National" and that because of his immigration status and country of origin he

has been subjected to more scrutiny and undue prejudice making the likelihood of an impartial jury less likely.

4. Sheer volume of coverage is not sufficient to mandate a change of venue. The Defendant must show he is prejudiced. The Defendant may demonstrate either actual prejudice or that the publicity attending the case is so pervasive and inflammatory that prejudice must be presumed. *See, State v. Morgan*, 559 N.W.2d 603 (Iowa 1997); *State v. Johnson*, 318 N.W.2d 417 (Iowa 1982), *State v. Wilson*, 406 N.W.2d 442 (Iowa 1987), *State v. Dague*, 206 N.W.2d 93 (Iowa 1973).

5. It is the State's position that a fair and impartial jury cannot reasonably be selected in Poweshiek County. Given the nature of the crimes charged, there is a substantial likelihood many prospective jurors will have heard of the facts that support it and have substantial knowledge of the investigation. The death of Mollie Tibbetts has touched many of the residents of Poweshiek County and her death has significantly and emotionally affected many of the residents of the county and prospective jurors making it extremely difficult to obtain a fair and impartial jury.

6. Although Poweshiek County residents are, like most Iowans, fair-minded people who are capable of abiding by their oath and would make good jurors, venue of this particular trial is better situated elsewhere.

7. The State would note that one of the claims by the Defendant is that witnesses they have spoken to fear governmental interference with their lives even though most of them are in this country legally. The State is not aware of how this particular fact weighs on venue. It has been the experience of investigators that most

of the immigrant population in Poweshiek County and elsewhere has been cooperative with law enforcement and appropriately concerned about the disappearance and death of Mollie Tibbetts.

7. The Defendant is not allowed to choose where the trial is to be moved. *See, e.g., State v. Barrett*, 445 N.W.2d 749, 753 (Iowa 1989) ("Our system however does not accord the Defendant the privilege of designating the county to which venue is to be moved"); *State v. Walters*, 426 N.W.2d 136 (Iowa 1988) (same); *Harnack v. District Court of Woodbury County*, 179 N.W.2d 356, 360 (Iowa 1970), *overruled on other grounds*; *Lloyd v. District Court of Scott County*, 201 N.W.2d 720 (Iowa 1972) (selection of the county to which the cause is to be removed for trial rests with the discretion of the trial judge).

8. If the Court moves this case to another county, the State would ask the Court to consider a county with similar demographics as Poweshiek County and a courthouse that is easily accessible and not congested during the time frame scheduled for trial. The Court should also consider the ease of travel for both State and defense witnesses.

9. At the Court's direction both the parties have discussed potential locations of this case and are prepared to discuss with the court our suggestions on trial venue.

WHEREFORE the State of Iowa requests the Court enter an appropriate order relating to venue.

/s/ Bart Klaver

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